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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,073	04/16/2004	Paul A. Lindberg	83714.86249	9970
24335 7590 08/19/2008 WARNER NORCROSS & JUDD LLP 900 FIFTH THIRD CENTER 111 LYON STREET, N.W. GRAND RAPIDS, MI 49503-2487				
			EXAMINER	
			CHIN, PAUL T	
		ART UNIT	PAPER NUMBER	
		3652		
		MAIL DATE	DELIVERY MODE	
		08/19/2008		PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/826,073

**Applicant(s)**

LINDBERG, PAUL A.

**Examiner**

PAUL T. CHIN

**Art Unit**

3652

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2, 4, 5, 10-13, 16, 19, 20 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 4, 5, 10-13, 16, 19, 20 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 2, 16, and 22 are objected to because of the following informalities: claim 2, line 8, claim 16, line 5, and claim 22, line 7, recite "said first and second arms each have a generally uniform thickness" and it appears that the word "have" after "each" should be changed to -- has --. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2, 4, 5, 10, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kifer (Des. 245,972) (see PTO-892) in view of Hendrickson (1,480,820) and further in view of Eckert (1,468,344) (see PTO-892).

With respect to claim 2, Kifer (Des. 245,972) discloses a device capable of lifting and manipulating landscaping comprising:

a first arm (see Fig. 1) having an upper portion, a pivot portion and a lower portion, said upper portion of said first arm and said lower portion of said first arm extending in a common plane;

a second arm (see Fig. 1) having an upper portion, a pivot portion and a lower portion, said pivot portion of said first arm pivotally connected to said pivot portion of said second arm, said upper portion of said second arm and said lower portion of said second arm extending in said common plane; wherein said first and second arms each have a

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generally uniform thickness (see Fig. 3); wherein at least a portion of said upper portion of said first arm follows a first radius of curvature (see **Exhibit A**) having a center on an exterior side of said first arm; further comprising a first jaw affixed to said first arm, said jaw extending substantially perpendicularly to a longitudinal extent of said first arm, wherein said jaw includes a radius of curvature having a center on an interior side of said first arm; and wherein said jaw having a first leg and a second leg.

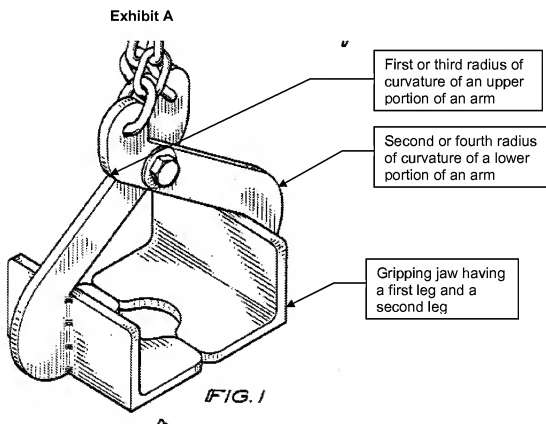
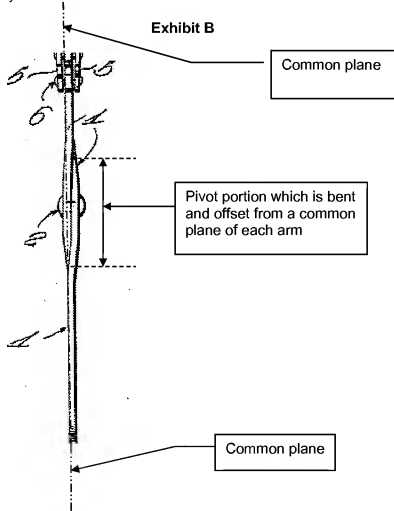


Fig. 3 of Kifer (Des. 245,972) shows that the first and second arms are aligned side by side, but does not clearly show that at least one of said pivot portion of said first arm and said pivot portion of said second arm is offset from said common plane. However, Hendrickson (1,480,820) teaches a gripping tongs having a pair of crossed levers or arms (1, 1) being pivoted at a pivot (2) wherein the pivot portions of each arm is bent and offset as shown in Fig. 2 (see **Exhibit B**) to restrict or limit the pivoting range of the

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arms, to minimize the bending force, and also provide an effective grip by aligning the arms. Thus, it would have been obvious to those skilled in the art to modify the pivoting portion of the arm of Kifer's device (Des. 245,972) to be bent and offset as taught by Hendrickson (1,480,820) not only to limit the pivoting ranges of the arms but also to minimize the bending force of the arms providing better alignment and preventing the vertically rotation of the device.



The modified Kifer's device (Des. 245,972) shows each jaw having a first leg and a second leg and the jaw having a radius of curvature on the gripping edge, but does not clearly teach a plurality of teeth on the jaw. However, Eckert (1,468,344) teaches a pair

of crossed arms (10, 10) each arm having a gripping jaw (14) and each jaw having a plurality of teeth (16, 16) on the inner edge of the gripping jaw. Thus, it would have been obvious to those skilled in the art to provide a plurality of teeth on the jaw of the Kifer's device (Des. 245,972) as taught by Eckert (1,468,344) to provide a stronger grip to the device. Note that it would have been obvious to those skilled in the metal art to provide a material selection (such as steel, stainless steel, or iron) on the modified Kifer's device (Des. 245,972) to provide a reliable device depending on the environment.

Re claim 4, Exhibit A of Kifer's device (Des. 245,972) teaches at least a portion of said lower portion of said first arm follows a second radius of curvature having a center on an interior side of said first arm, and wherein at least a portion of said upper portion of said second arm follows a third radius of curvature having a center on an exterior side of said second arm and at least a portion of said lower portion of said second arm follows a fourth radius of curvature having a center on an interior side of said second arm.

Re claim 5, figs. 1-3 of Kifer's device (Des. 245,972) teach that the first arm is pivotally connected to the second arm by a pivot element.

Re claim 10, the modified Kifer's device (Des. 245,972) also teaches that the arms are moveable between a first fully open position and a second closed position. With respect to the fully opening of the device, it would have been obvious to those skilled in the hoisting and lifting art to optimize the first leg of said first jaw to extend along a substantially horizontal plane capable of gripping a larger object or item.

With respect to claim 16, Kifer (Des. 245,972) discloses a device capable of lifting and manipulating landscaping comprising:

a first arm (see Fig. 1) having an upper portion, a pivot portion and a lower portion, said upper portion of said first arm and said lower portion of said first arm extending in a

common plane;

a second arm (see Fig. 1) having an upper portion, a pivot portion and a lower portion, said pivot portion of said first arm pivotally connected to said pivot portion of said second arm, said upper portion of said second arm and said lower portion of said second arm extending in said common plane; wherein said first and second arms each have a generally uniform thickness (see Fig. 3); wherein at least a portion of said upper portion of said first arm follows a first radius of curvature (see **Exhibit A**) having a center on an exterior side of said first arm; further comprising a first jaw affixed to said first arm, said jaw extending substantially perpendicularly to a longitudinal extent of said first arm, wherein said jaw includes a radius of curvature having a center on an interior side of said first arm; and wherein said jaw having a first leg and a second leg.

Fig. 3 of Kifer (Des. 245,972) shows that the first and second arms are aligned side by side, but does not clearly show that at least one of said pivot portion of said first arm and said pivot portion of said second arm is offset from said common plane. However, Hendrickson (1,480,820) teaches a gripping tongs having a pair of crossed levers or arms (1, 1) being pivoted at a pivot (2) wherein the pivot portions of each arm is bent and offset as shown in Fig. 2 (see **Exhibit B**) to restrict or limit the pivoting range of the arms, to minimize the bending force, and also provide an effective grip by aligning the arms. Thus, it would have been obvious to those skilled in the art to modify the pivoting portion of the arm of Kifer's device (Des. 245,972) to be bent and offset as taught by Hendrickson (1,480,820) not only to limit the pivoting ranges of the arms but also to minimize the bending force of the arms providing better alignment and preventing the vertically rotation of the device.

The modified Kifer's device (Des. 245,972) shows each jaw having a first leg and a second leg and the jaw having a radius of curvature on the gripping edge, but does not clearly teach a plurality of teeth on the jaw. However, Eckert (1,468,344) teaches a pair of crossed arms (10, 10) each arm having a gripping jaw (14) and each jaw having a plurality of teeth (16, 16) on the inner edge of the gripping jaw. Thus, it would have been obvious to those skilled in the art to provide a plurality of teeth on the jaw of the Kifer's device (Des. 245,972) as taught by Eckert (1,468,344) to provide a stronger grip to the device. Note that it would have been obvious to those skilled in the metal art to provide a material selection (such as steel, stainless steel, or iron) on the modified Kifer's device (Des. 245,972) to provide a reliable device depending on the environment.

It is also pointed out that Figs. 1 and 3 of Kifer (Des. 245,972), as presented above, further teach a lifting ring, a first shackle being connected to the first arm and a second shackle being connected to the second arm. Also note that the modified Kifer's device (Des. 245,972) also teaches that the arms are moveable between a first fully open position and a second closed position. With respect to the fully opening of the device, it would have been obvious to those skilled in the hoisting and lifting art to optimize the first leg of said first jaw to extend along a substantially horizontal plane capable of gripping a larger object or item.

Re claim 19, fig. 2 of Kifer's device (Des. 245,972) shows a substantially S-shaped arm.

4. Claims 11-13, 20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kifer (Des. 245,972) (see PTO-892) and Hendrickson (1,480,820) in view of Eckert (1,468,344) (see PTO-892), as applied to claims 2, 4, 5, 10 (for claims 11-13) and claims 16 and 19 (for claim 20), and further in view of Miller (3,572,808) (see PTO-892).



With respect to claims 11 and 12, Fig. 1 of the modified device (Des. 245,972), as presented above, does not show a pair of reinforcing plates interconnected between said first jaw and said first arm. However, Miller (3,572,808) teaches a pair of reinforcing plates (R, R) being disposed on opposite sides of the right angle of the members (see Figs. 1 and 2) to strengthen the device. Thus, it would have been obvious to those skilled in the art to provide a plurality of reinforcing plates between the jaw and the arm of the Kifer's device (Des. 245,972) as taught by Miller (3,572,808) to strengthen the jaws and the arms providing a stronger grip.

With respect to claims 13 and 20, the modified device (Des. 245,972), as presented above, does not show a handle mounted and perpendicularly positioned on each arm. However, Miller (3,572,808) teaches a handle (28, 38) mounted on a lower portion of each arm (22, 32). Thus, it would have been obvious to those skilled in the art to provide a handle on a lower portion of each arm of the Kifer's device (Des. 245,972) as taught by Miller (3,572,808) to provide a grip to an operator. It is pointed out that it would have been obvious to those skilled in the hoisting and lifting art to perpendicularly position and mount each handle on each arm of the Kifer's device to provide a safe and strong grip to an operator of the device.

With respect to claim 22, the claim is a combination of claims 2, 4, 5, 10, 11, 13, and 16. Kifer (Des. 245,972) in view Hendrickson (1,480,820) and in view of Eckert (1,468,344), as presented in section 3 above, teaches all the structural limitations as recited in claims 2, 4, 5, 10, 11, 13, and 16. Moreover, Figs. 1 and 3 of Kifer (Des. 245,972) also teach a lifting ring, a first shackle being connected to the first arm and a second shackle being connected to the second arm. Fig. 1 of the modified device (Des. 245,972), as presented above, does not show a pair of reinforcing plates interconnected between said

first jaw and said first arm. However, Miller (3,572,808) teaches a pair of reinforcing plates (R, R) being disposed on opposite sides of the right angle of the members (see Figs. 1 and 2) to strengthen the device. Thus, it would have been obvious to those skilled in the art to provide a plurality of reinforcing plates between the jaw and the arm of the Kifer's device (Des. 245,972) as taught by Miller (3,572,808) to strengthen the jaws and the arms providing a stronger grip. The modified device (Des. 245,972), as presented above, does not show a handle mounted and perpendicularly positioned on each arm. However, Miller (3,572,808) teaches a handle (28, 38) mounted on a lower portion of each arm (22, 32). Thus, it would have been obvious to those skilled in the art to provide a handle on a lower portion of each arm of the Kifer's device (Des. 245,972) as taught by Miller (3,572,808) to provide a grip to an operator. It is pointed out that it would have been obvious to those skilled in the hoisting and lifting art to perpendicularly position and mount each handle on each arm of the Kifer's device to provide a safe and strong grip to an operator of the device.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 2, 4, 5, 10-13, 16, 19, 20, and 22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Robb (1,877,974) teaches a gripping tongs (see Figs. 2 and 3) having crossed arms (2, 2a) being pivoted at a pivot (1) wherein the pivot portions of each arm is bent and offset as shown in Fig. 3 to limit the pivoting ranges of the arms and also to provide an effective grip by aligning the arms.

Shroyer (1,728,084) shows a pair of crossed levers or arms (1, 2) and a pivot (4) wherein the pivot portion of the arms is bent and offset (Fig. 3) from a common plane of the arm.

7. Applicant's amendment (the addition of new structural limitations, such as "the first and second arms each has a generally uniform thickness", in combination with other structural limitations) necessitated the new ground(s) of rejection presented in this Office action.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571)272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAUL T. CHIN/

Primary Examiner, Art Unit 3652